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RECORD OF ORAL HEARING

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte GREG LINDEN

Appeal 2007-0702
Application 09/538,679
Technology Center 3600

Oral Hearing Held: December 19, 2007

Before HUBERT LORIN, ANTON W. FETTING, JOSEPH A.
FISCHETTI, Administrative Patent Judges

ON BEHALF OF THE APPELLANT:

STEVE LAWRENCE, ESQUIRE
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The above-entitled matter came on for hearing on Wednesday, December
19, 2007, commencing at 9:00 a.m, at The U.S. Patent and Trademark
Office, 600 Dulany Street, Alexandria, Virginia, before Beverly J. Mahoney,
Notary Public.

1 PROCEEDINGS
2

3 JUDGE LORIN: Counsel, if I understand correctly, this is Appeal
4Number 2007-0702; is that correct?

5 MR. LAWRENZ: Correct.

6 JUDGE LORIN: Counsel, can you speak up, please.

7 MR. LAWRENZ: Can you hear me better now?

8 JUDGE LORIN: Yes, we can hear you a bit better now.

9 We are familiar with the case. When you are ready, you have 20
10minutes, and you may proceed.

11 MR. LAWRENZ: My name is Steve Lawrenz. I will be joined in a
12moment by my associate, Michelle McCartney. We are very grateful for the
13time and energy that this panel is expending on the appeal. And I want to
14make sure that all members of the panel feel free to interrupt me at any time
15they have questions.

16 The invention at hand has to do with an approach to identifying --
17starting from a single purchasing opportunity, such as an auction for a unit
18of an item, identifying similar purchasing opportunities.

19 And in some cases this extends to finding other purchasing
20opportunities for other units of the same item, by which we mean two copies
21of a single book, for example, or two sets of Archie and Jughead salt and
22pepper shakers.

23 I would like to walk through the language of the claims, talk about the
24merit, or lack thereof, of the rejections under Section 112, and also give you
25our perspective on the rejection under Section 103.

26 Our argument and brief today focuses on the independent claims,

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1claim 1 and claim 2. I will walk quickly through each of them.

2 Claim 1 is focused specifically at auctions. And the first step is
3displaying information about a first auction, the information including a
4description of the first item unit offered in the first auction.

5 Again, we understand the term "item unit" to mean a particular copy
6of some product or other item for which more than one copy has been made,
7like different copies of the same book.

8 Receiving user input, requesting information about other auctions
9offering item units that are units of the same item as the first item unit, and
10the user may wish to do this, for example, where they are seeking auction
11where the bidding is at a lower level or the quality of a used item is more
12closely attune to their desires.

13 They are determining for the description of the first item among
14descriptions of item units offered in a group of auctions, including the first
15auction, the inverse document frequency of terms occurring within the
16description of the first item unit.

17 So that is for the terms and the description of the first item unit,
18finding the inverse document frequency of that term in that document
19relative to this larger group of descriptions of auctions in a group, selecting
20--

21 THE COURT REPORTER: Excuse me, Your Honor.

22 JUDGE LORIN: Counsel, Counsel --

23 THE COURT REPORTER: Your Honor, we are not getting a record.

24 JUDGE LORIN: Excuse us. Counsel, Counsel, Counsel -- can you
25hear me?

26 MR. LAWRENZ: Sir?

1 JUDGE LORIN: Could you slow down? We have a transcriber here
2and she is trying her best to get this all down. Could you slow down in your
3speech, please. We are having a problem understanding you.

4 MR. LAWRENZ: I certainly can. If you have other feedback to offer
5along these lines as we proceed, please let me know.

6 Having calculated that inverse document frequencies for each of the
7terms in the item description of the first item unit, the claim recites choosing
8those terms that have the highest inverse document frequencies.

9 The next step is for each of those terms searching auctions in the
10group whose description also contain that term. And the next step is having
11items of those -- of the auctions in the group, whose descriptions contain the
12term, for each of those, determining which of those terms are also present in
13the found auctions item description.

14 And then the second-to-last step is identifying as an auction offering
15an item unit that is a unit of the same item as the first item unit, so that's
16picking one of these auctions and asserting that it's for a different unit of the
17same item.

18 And on the found auctions when the soft of the inverse document
19frequencies of the selected terms that occur in the items for that auction
20exceed the threshold.

21 So we are signed by the terms in the found auction that match the
22selected terms in the starting auction. And on the basis of determining that
23they exceed some threshold, deciding that this is an auction for a different
24unit of the same item. And then finally, displaying information about the
25identified auction.

26 Did I raise any questions in my claim 1?

1 JUDGE LORIN: No questions.

2 MR. LAWRENZ: Let me move on to claim 2, because it's quite
3similar, but it uses some slightly different language.

4 JUDGE LORIN: Counsel, Counsel -- Counsel, Counsel -- can you
5hear me?

6 MR. LAWRENZ: -- purchasing opportunity for auction to encompass
7purchasing opportunities --

8 JUDGE LORIN: Counsel, Counsel --

9 MR. LAWRENZ: -- rather than inverse document frequency, to the
10extent to which occurrence of the term in the descriptive information
11associated with the distinguished purchasing opportunity, differentiate the
12distinguished purchasing opportunity from the other purchasing
13opportunities.

14 So that's a characterization that would make these term scores quite
15similar to the inverse document frequencies recited in claim one.

16 JUDGE LORIN: Counsel, Counsel --

17 MR. LAWRENZ: -- and it refers to the words in --

18 JUDGE LORIN: Counsel, Counsel -- Counsel, Counsel -- Counsel,
19can you hear me?

20 MR. LAWRENZ: -- as key words, and again, they are selected on the
21same basis of having the highest term scores. And the somewhat
22significance --

23 THE COURT REPORTER: Excuse me, Your Honor, we can't go
24forward like this. We are not getting a record.

25 JUDGE LORIN: Counsel, Counsel -- Counsel, can you hold on for a
26second here. You are talking much too quickly. And we are finding that

1when we try to interject here that you are unable to hear us.

2 MR. LAWRENZ: I think I am going to switch to a handset then to
3make sure that you have every opportunity to interact successfully. May I
4call you back immediately on the same number?

5 JUDGE LORIN: No. What's best is for you to stay on line, and speak
6clearly and slowly, and take a breath after a few sentences, and wait to hear
7if there is any response.

8 MR. LAWRENZ: Very well. I will do that. Thank you for the
9suggestion.

10 JUDGE LORIN: And another thing, I notice that you are talking a lot
11about the claim. I think it's better for you to go directly to the issue and
12speak to that.

13 MR. LAWRENZ: Thank you for the suggestion, and I will do just
14that.

15 The rejections in this case are under Section 112, second paragraph;
16Section 112, first paragraph; and Section 103. And I would like to address
17them in that order.

18 The rejection under Section 112, second paragraph, asserts that the
19language in claim 1, in the second-to-last element, a unit of the same item as
20the first item unit is indefinite.

21 And I think the position taken by the examiner is that items are
22singular, every item in the world is different, and that it's, I guess,
23nonsensical to characterize two different item units as being units of the
24same item.

25 We certainly don't share that view, and we think that the specification
26of the application is clear in its characterization of units of the same item as

1different copies of -- well, from the same design.

2 And the example we would give is the Archie and Jughead salt and
3pepper shakers that are both the subject of the starting auction and one of the
4found auctions in that example given in the specification.

5 So in our view, the meaning of this term is clear and would be clear to
6one of ordinary skill and art. They would be able to apply this claim, and in
7particular this language, to determine whether a particular accused method
8was seeking to find two copies of the same thing, two units of the same item
9or not.

10 Did I raise any questions there?

11 JUDGE LORIN: No, thank you, Counsel. You may go on.

12 MR. LAWRENZ: So the rejection under Section 112, first paragraph,
13is particularly the rejection on the enablement requirement of the first
14paragraph.

15 And my understanding of the basis for this rejection is that it's
16impossible, because of the examiner's understanding of the term "same
17item," it's -- we haven't shown how the claimed invention would find
18different opportunities for what we regard as the same unit of the same item,
19which is how the examiner is reading this claim.

20 As we have made fairly clear in our briefing and here today, we don't
21share that understanding of the term. So we feel like in the details of the
22specification, and indeed in, for example, just the content of claim 1 alone,
23the steps necessary to find auctions, or in the case of -- well, the steps
24necessary to find auctions that the system thinks are offering for sale.

25 Different units of the same item are present, and one skilled in the art
26would be able to take the description and, quite straightforwardly, build an

1implementation that does accomplish that end.

2 Does the panel have any questions about that issue?

3 JUDGE LORIN: No, Counsel. Thank you.

4 MR. LAWRENZ: Now progressing to the 103 rejection. The
5rejection, both claims 1 and 2 and the dependent claims, is formulated based
6upon three references. And they are the Phillips reference, the Ishikawa
7reference and the Sato reference.

8 Ishikawa and Sato are both directed to use of inverse document
9frequency scores and contacts other than auctions and buying opportunities.
10The Phillips reference is directed to an online catalogue system.

11 If you have the Phillips reference available, you will see that. It
12makes up a description of a particular electronic part called a compander,
13and it has a description and additional information about the product, linked
14to the data sheet for the product, and such information.

15 It also has a link near the top that's labeled "find some more products,"
16which apparently helps to jump to the last substantive section of this page
17that's headed "find some more products by," and on to page 2, and continues
18on page 3.

19 And it shows parts of -- apparently there is a large hierarchy of all the
20products in the catalogue, so there are categories and subcategories and
21subcategories. And it shows that this compander part occurs at two points in
22this manufacturer's product hierarchy.

23 And you can kind of see two hierarchy structures. And the first one,
24top level category is ICs, and the second one is audio/video/PC, and further
25down you see the compander, SA571 compander, the one that's the subject
26of this Web page.

1 And then if you flip to page 3, you see it down a different path
2through the hierarchy, the compander SA571, in a different spot.

3 And it's the examiner's position that, number one, these -- as far as we
4understand, that these two -- the links each labeled SA571 compander in this
5hierarchy each constitute a buying opportunity or an auction for either a
6different unit of the same item, in the case of claim 1, or a purchasing
7opportunity for an item that had the description but whose terms have a high
8idea of matching a score, as described in claim 2.

9 And that's not our perspective on this reference at all. There is no
10mention in this reference that any of the items, any of these parts, can be
11purchased at auction. It's not even necessarily clear that they are available
12for purchase, although I think we can assume that they are because it says
13this is an electronics component manufacturer.

14 But no purchasing information is available here. And if we assume
15that someone would know to call a bill of sale agent in order to buy one of
16these compander SA571s, at least relative to claim 1, they would be saying,
17SA571 is what I want; send me one of those, please.

18 And it would have no relevance whether they had followed the first or
19the second link in those hierarchies because, indeed, as far as we can
20determine, the links only return you to this page again.

21 So it's hard to think of those links as different auctions because, again,
22as far as we know, there are no auctions involved or different buying
23opportunities.

24 Because, again, it seems like the only buying opportunity we can even
25imagine, based on this reference, is calling up and saying, I want an SA571,
26which is interesting with both of those links, not a particular one of them.

1 JUDGE FISCHETTI: Counsel, can I interrupt you for a quick second.

2 MR. LAWRENZ: Please do.

3 JUDGE FISCHETTI: My question to you is, what in the
4methodology of claim 1 is particularly tailored to the search of an auction
5versus the search of a product in general, such as shown by compander?

6 MR. LAWRENZ: I think, to be fair, the only part of claim 1 that
7reads out the non-auction aspect of the Phillips reference is the specific
8recitation of an auction.

9 I don't think -- there is nothing, besides specifically reciting auction, I
10don't believe there are any other features in claim 1 that would tend to
11require an auction.

12 Was there some followup that you saw in that direction?

13 JUDGE FISCHETTI: No. I understand. Thank you.

14 MR. LAWRENZ: Sure.

15 JUDGE FETTING: I have a question, Counsel.

16 MR. LAWRENZ: Absolutely.

17 JUDGE FETTING: Is it your contention that one of ordinary skill
18would not have thought to use a search engine to find the products from the
19Phillips website?

20 MR. LAWRENZ: I find in Phillips -- no, I don't have any reason to
21believe that one of ordinary skill would have known to do that, because I
22think Phillips had this conception of finding similar products, where they
23have this link, and it had the section.

24 And it seems like there are two ways to read what they intended by
25similar price. One is on the same product again, which doesn't really make
26much sense.

1 But I think my understanding of how they intended these hierarchies
2to be used is that people would start traversing up toward the root of the
3hierarchy.

4 So if you look at the first hierarchy and start at the SA571 compander
5and go up to the two companders, I think that the intended use of this part of
6the page is that they might try clicking there and seeing a list of the two
7companders that would include one compander other than SA571.

8 And then they would be exploring for -- and then they would be
9exploring for units of an item that was different but similar presumably.

10 And it seems like they have got this methodology of the hierarchy,
11their hierarchy is really rigorous, and that it even includes an item at
12multiple points that it might occur.

13 And I am not sure that one of ordinary skill and art wouldn't have
14been satisfied that this -- that to the extent that the Phillips reference raises
15this requirement of being able to find units of similar items, that this
16hierarchy isn't completely sufficient. I think that's a long way of saying no.

17 JUDGE FETTING: I guess I am approaching it from a question of, if
18I am somebody who happens to need a compander, whatever that is, why
19wouldn't I just have gone to Yahoo, which I believe existed prior to your
20filing date, and simply put in the word "compander" into its search engine to
21see whoever, including Phillips, might have them?

22 And let it come back with everybody's, including all of these products
23and packages that are listed on page 2.

24 MR. LAWRENZ: I don't think that that -- our filing date was 2000 --
25I think it's reasonable to believe that someone may have done that.

26 But is your contention that that approach to it is consistent -- would

1infringe on either of the independent claims?

2 Because you haven't started with the entire description of a product, or
3an item, which is the claim, from a single auction or a single buying
4opportunity, and mapped from there to a different auction or different
5buying opportunity. You started without an auction or a buying opportunity
6in just the key word that you mentioned.

7 JUDGE FETTING: Well, claim 2 just says, For terms occurring in
8descriptive association --

9 MR. LAWRENZ: Did you have any reaction to that response?

10 JUDGE FETTING: Yes. I'm saying there is no necessity that the
11purchasing opportunity necessarily has to have a Web page or anything, it
12just has to be a purchasing opportunity. I mean, if I want to buy something,
13that's certainly a purchasing opportunity.

14 MR. LAWRENZ: But the claim -- at least claim 1 does require -- so
15you are using the purchasing opportunity language, so I think you are talking
16about claim 2.

17 JUDGE FETTING: Right.

18 MR. LAWRENZ: So your position is that the language recited in
19claim 2, the description of information associated with the distinguished
20purchasing opportunity is just a set of key words that you had generated?

21 JUDGE FETTING: Right.

22 MR. LAWRENZ: I guess I would push back a little bit here and say
23that in the framework established by the specification, a purchasing
24opportunity is a chance to buy a particular item from a particular party under
25particular terms.

26 And that your desire for the product, however particularized it might

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1be, doesn't have all of those elements.

2 JUDGE FETTING: You want me to read the specification in claim 2?

3 MR. LAWRENZ: Well, in the case law there is a lot of different
4language to use, and that's between reading the specification and/or using the
5understanding of the terms used -- using the understanding provided by the
6specification of the terms used in the claim to read the claim, yes.

7 JUDGE FETTING: Okay.

8 MR. LAWRENZ: Certainly, for claim 1, your desire for the product
9doesn't strike me as a first auction in the language that's recited there.

10 JUDGE LORIN: Counsel, you may want to wrap it up.

11 MR. LAWRENZ: Ms. McCartney and I, and the assignee, are very
12grateful for your work on this appeal. Thank you very much for your time
13today.

14 JUDGE LORIN: Thank you, Counsel. We will take your comments
15under advisement.

16 MR. LAWRENZ: Thank you.

17 (Whereupon, the proceedings at 9:25 a.m. were concluded.)